

AMENDED IN ASSEMBLY SEPTEMBER 1, 2005

AMENDED IN ASSEMBLY AUGUST 22, 2005

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY JULY 6, 2005

AMENDED IN ASSEMBLY JUNE 27, 2005

AMENDED IN SENATE APRIL 5, 2005

SENATE BILL

No. 137

Introduced by Senators Ducheny, Dunn, and Figueroa

(Principal coauthor: Assembly Member Leslie)

(Coauthors: Senators Alquist, Denham, Escutia, and Kuehl)

(Coauthors: Assembly Members Jones, Leno, Lieber, and Torrico)

February 2, 2005

An act to amend Sections 1365.1 and 1367.1 of, to add Sections 1363.001, 1367.4, and 1367.5 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Section 116.540 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 137, as amended, Ducheny. Common interest developments: assessments.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the

owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a ~~specified document~~ *notice of delinquent assessment* and follows a specified process. The act permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

The act authorizes an owner of a separate interest in a common interest development to pay assessments that are in dispute in full under protest. Existing law, the right of redemption, permits a judgment debtor, as defined, to redeem his or her real property, as specified, after judicial foreclosure only if the decree of foreclosure finds that a deficiency judgment may be ordered against the debtor.

This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2006. The bill would provide that when an association of a common interest development seeks to collect delinquent assessments of less than ~~\$1,500~~ *\$1,800*, not including *accelerated assessments and* specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing until the amount equals or exceeds ~~\$1,500~~ *\$1,800* or the assessments are more than ~~24~~ *12* months delinquent. The bill would ~~repeal~~ *delete* provisions authorizing the owner of a separate interest to pay assessments that are in dispute in full under protest and requiring the board of directors of an association to respond to an owner's written dispute of a debt within 15 days.

The bill would permit an association of a common interest development seeking to collect delinquent regular or special assessments of ~~\$1,500~~ *\$1,800* or more, not including *accelerated assessments and* specified late charges and fees, or any assessments that are more than ~~24~~ *12* months delinquent, to use foreclosure subject to specified conditions. Among these conditions, the bill would require the board of directors of an association to make the decision to foreclose upon a lien at an executive meeting of the board, by a majority vote, as specified, at least 30 days prior to any public sale, and to record the results of the vote, as specified, and would require the board to provide notice of the decision to foreclose, as specified.

The bill would require, if the owner so requests, that the association permit the owner of the separate interest to elect dispute resolution or alternative dispute resolution procedures, under specified circumstances. The association would be prohibited from recording a

lien or initiating a foreclosure action without participating in those procedures if so requested by the owner. If it is determined through dispute resolution or alternative dispute resolution that an association has filed a lien for a delinquent assessment in error, the association would be required to reverse specified charges and take other corrective actions.

The bill *would require the association to file an itemized statement of the charges owed by the owner together with the notice of delinquent assessment.* The bill would further provide that, notwithstanding any law to the contrary, a foreclosure by an association to collect upon a debt for a delinquent assessment, as specified, is subject to a right of redemption. The bill would provide a redemption period of 90 days. ~~The bill would establish a minimum bid of 65% of the appraised value, exclusive of senior liens, as specified, in a judicial or nonjudicial foreclosure to collect upon a debt for a delinquent assessment, as specified.~~ The bill would exempt from its provisions developers and separate interest owners in timeshare projects, as specified.

The bill would require the association to send any and all correspondence and specified legal notices to both a primary and secondary address, as specified, if the owner provides written notice of the secondary address to the association. The bill also would authorize an association created to manage a common interest development to appear and participate in small claims court hearings through *an agent*, a management company representative, or bookkeeper who appears on behalf of the association.

This bill would, to the extent existing funds are available, require the Department of Consumer Affairs and the Department of Real Estate to develop an on-line education course for the board of directors of an association regarding the role, duties, laws, and responsibilities of board members *and prospective board members* and the nonjudicial foreclosure process.

The bill would make other related, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1363.001 is added to the Civil Code, to
2 read:

1 1363.001. To the extent existing funds are available, the
2 Department of Consumer Affairs and the Department of Real
3 Estate shall develop an on-line education course for the board of
4 directors of an association regarding the role, duties, laws, and
5 responsibilities of board members *and prospective board*
6 *members*, and the nonjudicial foreclosure process.

7 SEC. 2. Section 1365.1 of the Civil Code is amended to read:

8 1365.1. (a) The association shall distribute the written notice
9 described in subdivision (b) to each member of the association
10 during the 60-day period immediately preceding the beginning of
11 the association's fiscal year. The notice shall be printed in at least
12 12-point type. An association distributing the notice to an owner
13 of an interest that is described in Section 11212 of the Business
14 and Professions Code that is not otherwise exempt from this
15 section pursuant to subdivision (a) of Section 11211.7, may
16 delete from the notice described in subdivision (b) the portion
17 regarding meetings and payment plans.

18 (b) The notice required by this section shall read as follows:

19
20 "NOTICE ASSESSMENTS AND FORECLOSURE
21

22 This notice outlines some of the rights and responsibilities of
23 owners of property in common interest developments and the
24 associations that manage them. Please refer to the sections of the
25 Civil Code indicated for further information. A portion of the
26 information in this notice applies only to liens recorded on or
27 after January 1, 2003. You may wish to consult a lawyer if you
28 dispute an assessment.
29

30 ASSESSMENTS AND FORECLOSURE
31

32 Assessments become delinquent 15 days after they are due,
33 unless the governing documents provide for a longer time. The
34 failure to pay association assessments may result in the loss of an
35 owner's property through foreclosure. Foreclosure may occur
36 either as a result of a court action, known as judicial foreclosure
37 or without court action, often referred to as nonjudicial
38 foreclosure. For liens recorded on and after January 1, 2006, an
39 association may not use judicial or nonjudicial foreclosure to
40 enforce that lien if the amount of the delinquent assessments or

1 dues, exclusive of any *accelerated assessments*, late charges,
 2 fees, attorney's fees, interest, and costs of collection, is less than
 3 one thousand~~five~~ *eight* hundred dollars~~(\$1,500)~~ *(\$1,800)*. For
 4 delinquent assessments or dues in excess of one thousand~~five~~
 5 *eight* hundred dollars~~(\$1,500)~~ *(\$1,800)* or more than~~24~~ 12
 6 months delinquent, an association may use judicial or nonjudicial
 7 foreclosure subject to the conditions set forth in Section 1367.4
 8 of the Civil Code. When using judicial or nonjudicial foreclosure,
 9 the association records a lien on the owner's property. The
 10 owner's property may be sold to satisfy the lien if the amounts
 11 secured by the lien are not paid. (Sections 1366, 1367.1, and
 12 1367.4 of the Civil Code)

13 In a judicial or nonjudicial foreclosure, the association may
 14 recover assessments, reasonable costs of collection, reasonable
 15 attorney's fees, late charges, and interest. The association may
 16 not use nonjudicial foreclosure to collect fines or penalties,
 17 except for costs to repair common areas damaged by a member
 18 or a member's guests, if the governing documents provide for
 19 this. (Sections 1366 and 1367.1 of the Civil Code)

20 The association must comply with the requirements of Section
 21 1367.1 of the Civil Code when collecting delinquent
 22 assessments. If the association fails to follow these requirements,
 23 it may not record a lien on the owner's property until it has
 24 satisfied those requirements. Any additional costs that result from
 25 satisfying the requirements are the responsibility of the
 26 association. (Section 1367.1 of the Civil Code)

27 At least 30 days prior to recording a lien on an owner's
 28 separate interest, the association must provide the owner of
 29 record with certain documents by certified mail, including a
 30 description of its collection and lien enforcement procedures and
 31 the method of calculating the amount. It must also provide an
 32 itemized statement of the charges owed by the owner. An owner
 33 has a right to review the association's records to verify the debt.
 34 (Section 1367.1 of the Civil Code)

35 If a lien is recorded against an owner's property in error, the
 36 person who recorded the lien is required to record a lien release
 37 within 21 days, and to provide an owner certain documents in
 38 this regard. (Section 1367.1 of the Civil Code)

1 The collection practices of the association may be governed by
2 state and federal laws regarding fair debt collection. Penalties can
3 be imposed for debt collection practices that violate these laws.

5 PAYMENTS

7 When an owner makes a payment, he or she may request a
8 receipt, and the association is required to provide it. On the
9 receipt, the association must indicate the date of payment and the
10 person who received it. The association must inform owners of a
11 mailing address for overnight payments. (Section 1367.1 of the
12 Civil Code)

13 An owner may dispute an assessment debt by submitting a
14 written request for dispute resolution to the association as set
15 forth in Article 5 (commencing with Section 1368.810) of
16 Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition,
17 an association may not initiate a foreclosure without participating
18 in alternative dispute resolution with a neutral third party as set
19 forth in Article 2 (commencing with Section 1369.510) of
20 Chapter 7 of Title 6 of Division 2 of the Civil Code, if so
21 requested by the owner. Binding arbitration shall not be available
22 if the association intends to initiate a judicial foreclosure.

23 An owner is not liable for charges, interest, and costs of
24 collection, if it is established that the assessment was paid
25 properly on time. (Section 1367.1 of the Civil Code)

27 MEETINGS AND PAYMENT PLANS

29 An owner of a separate interest that is not a timeshare may
30 request the association to consider a payment plan to satisfy a
31 delinquent assessment. The association must inform owners of
32 the standards for payment plans, if any exist. (Section 1367.1 of
33 the Civil Code)

34 The board of directors must meet with an owner who makes a
35 proper written request for a meeting to discuss a payment plan
36 when the owner has received a notice of a delinquent assessment.
37 These payment plans must conform with the payment plan
38 standards of the association, if they exist. (Section 1367.1 of the
39 Civil Code)”

1 (c) A member of an association may provide written notice by
2 facsimile transmission or United States mail to the association of
3 a secondary address. If a secondary address is provided, the
4 association shall send any and all correspondence and legal
5 notices required pursuant to this article to both the primary and
6 the secondary address.

7 SEC. 3. Section 1366.3 of the Civil Code is repealed.

8 SEC. 4. Section 1367.1 of the Civil Code is amended to read:

9 1367.1. (a) A regular or special assessment and any late
10 charges, reasonable fees and costs of collection, reasonable
11 attorney's fees, if any, and interest, if any, as determined in
12 accordance with Section 1366, shall be a debt of the owner of the
13 separate interest at the time the assessment or other sums are
14 levied. At least 30 days prior to recording a lien upon the
15 separate interest of the owner of record to collect a debt that is
16 past due under this subdivision, the association shall notify the
17 owner of record in writing by certified mail of the following:

18 (1) A general description of the collection and lien
19 enforcement procedures of the association and the method of
20 calculation of the amount, a statement that the owner of the
21 separate interest has the right to inspect the association records,
22 pursuant to Section 8333 of the Corporations Code, and the
23 following statement in 14-point boldface type, if printed, or in
24 capital letters, if typed: "IMPORTANT NOTICE: IF YOUR
25 SEPARATE INTEREST IS PLACED IN FORECLOSURE
26 BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT
27 MAY BE SOLD WITHOUT COURT ACTION."

28 (2) An itemized statement of the charges owed by the owner,
29 including items on the statement which indicate the amount of
30 any delinquent assessments, the fees and reasonable costs of
31 collection, reasonable attorney's fees, any late charges, and
32 interest, if any.

33 (3) A statement that the owner shall not be liable to pay the
34 charges, interest, and costs of collection, if it is determined the
35 assessment was paid on time to the association.

36 (4) The right to request a meeting with the board as provided
37 by paragraph (3) of subdivision (c).

38 (5) The right to dispute the assessment debt by submitting a
39 written request for dispute resolution to the association pursuant

1 to the association's "meet and confer" program required in
2 Article 5 (commencing with Section 1363.810) of Chapter 4.

3 (6) The right to request alternative dispute resolution with a
4 neutral third party pursuant to Article 2 (commencing with
5 Section 1369.510) of Chapter 7 before the association may
6 initiate foreclosure against the owner's separate interest, except
7 that binding arbitration shall not be available if the association
8 intends to initiate a judicial foreclosure.

9 (b) Any payments made by the owner of a separate interest
10 toward the debt set forth, as required in subdivision (a), shall first
11 be applied to the assessments owed, and, only after the
12 assessments owed are paid in full shall the payments be applied
13 to the fees and costs of collection, attorney's fees, late charges, or
14 interest. When an owner makes a payment, the owner may
15 request a receipt and the association shall provide it. The receipt
16 shall indicate the date of payment and the person who received it.
17 The association shall provide a mailing address for overnight
18 payment of assessments.

19 (c) (1) (A) Prior to recording a lien for delinquent
20 assessments, an association shall offer the owner and, if so
21 requested by the owner, participate in dispute resolution pursuant
22 to the association's "meet and confer" program required in
23 Article 5 (commencing with Section 1363.810) of Chapter 4.

24 (B) Prior to initiating a foreclosure for delinquent assessments,
25 an association shall offer the owner and, if so requested by the
26 owner, shall participate in dispute resolution pursuant to the
27 association's "meet and confer" program required in Article 5
28 (commencing with Section 1363.810) of Chapter 4 or alternative
29 dispute resolution with a neutral third party pursuant to Article 2
30 (commencing with Section 1369.510) of Chapter 7. The decision
31 to pursue dispute resolution or a particular type of alternative
32 dispute resolution shall be the choice of the owner, except that
33 binding arbitration shall not be available if the association
34 intends to initiate a judicial foreclosure.

35 (2) For liens recorded on or after January 1, 2006, the decision
36 to record a lien for delinquent assessments shall be made only by
37 the board of directors of the association and may not be delegated
38 to an agent of the association. The board shall approve the
39 decision by a majority vote of the board members in an open

meeting. The board shall record the vote in the minutes of that meeting.

(3) An owner, other than an owner of any interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an association's ability to record a lien on the owner's *separate* interest to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's *separate* interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's *separate* interest in the common interest development against which the assessment and other sums are levied, *and* the name of the record owner of the ~~owner's~~ *separate* interest in the common interest development against which the lien is imposed. *The itemized statement of the charges owed by the owner described in paragraph (2) of subdivision (a) shall be recorded together with the notice of delinquent assessment.* In order for the lien to be enforced by

1 nonjudicial foreclosure as provided in subdivision (g), the notice
2 of delinquent assessment shall state the name and address of the
3 trustee authorized by the association to enforce the lien by sale.
4 The notice of delinquent assessment shall be signed by the
5 person designated in the declaration or by the association for that
6 purpose, or if no one is designated, by the president of the
7 association. A copy of the recorded notice of delinquent
8 assessment shall be mailed by certified mail to every person
9 whose name is shown as an owner of the ~~owner's~~ *separate*
10 interest in the association's records, and the notice shall be
11 mailed no later than 10 calendar days after recordation. Within
12 21 days of the payment of the sums specified in the notice of
13 delinquent assessment, the association shall record or cause to be
14 recorded in the office of the county recorder in which the notice
15 of delinquent assessment is recorded a lien release or notice of
16 rescission and provide the owner of the separate interest a copy
17 of the lien release or notice that the delinquent assessment has
18 been satisfied. A monetary charge imposed by the association as
19 a means of reimbursing the association for costs incurred by the
20 association in the repair of damage to common areas and
21 facilities for which the member or the member's guests or tenants
22 were responsible may become a lien against the member's
23 separate interest enforceable by the sale of the interest under
24 Sections 2924, 2924b, and 2924c, provided the authority to
25 impose a lien is set forth in the governing documents. It is the
26 intent of the Legislature not to contravene Section 2792.26 of
27 Title 10 of the California Code of Regulations, as that section
28 appeared on January 1, 1996, for associations of subdivisions that
29 are being sold under authority of a subdivision public report,
30 pursuant to Part 2 (commencing with Section 11000) of Division
31 4 of the Business and Professions Code.

32 (e) Except as indicated in subdivision (d), a monetary penalty
33 imposed by the association as a disciplinary measure for failure
34 of a member to comply with the governing instruments, except
35 for the late payments, may not be characterized nor treated in the
36 governing instruments as an assessment that may become a lien
37 against the member's subdivision separate interest enforceable by
38 the sale of the interest under Sections 2924, 2924b, and 2924c.

39 (f) A lien created pursuant to subdivision (d) shall be prior to
40 all other liens recorded subsequent to the notice of assessment,

1 except that the declaration may provide for the subordination
2 thereof to any other liens and encumbrances.

3 (g) An association may not voluntarily assign or pledge the
4 association's right to collect payments or assessments, or to
5 enforce or foreclose a lien to a third party, except when the
6 assignment or pledge is made to a financial institution or lender
7 chartered or licensed under federal or state law, when acting
8 within the scope of that charter or license, as security for a loan
9 obtained by the association; however, the foregoing provision
10 may not restrict the right or ability of an association to assign any
11 unpaid obligations of a former member to a third party for
12 purposes of collection. Subject to the limitations of this
13 subdivision, after the expiration of 30 days following the
14 recording of a lien created pursuant to subdivision (d), the lien
15 may be enforced in any manner permitted by law, including sale
16 by the court, sale by the trustee designated in the notice of
17 delinquent assessment, or sale by a trustee substituted pursuant to
18 Section 2934a. Any sale by the trustee shall be conducted in
19 accordance with Sections 2924, 2924b, and 2924c applicable to
20 the exercise of powers of sale in mortgages and deeds of trust.
21 The fees of a trustee may not exceed the amounts prescribed in
22 Sections 2924c and 2924d.

23 (h) Nothing in this section or in subdivision (a) of Section 726
24 of the Code of Civil Procedure prohibits actions against the
25 owner of a separate interest to recover sums for which a lien is
26 created pursuant to this section or prohibits an association from
27 taking a deed in lieu of foreclosure.

28 (i) If it is determined that a lien previously recorded against
29 the separate interest was recorded in error, the party who
30 recorded the lien shall, within 21 calendar days, record or cause
31 to be recorded in the office of the county recorder in which the
32 notice of delinquent assessment is recorded a lien release or
33 notice of rescission and provide the owner of the separate interest
34 with a declaration that the lien filing or recording was in error
35 and a copy of the lien release or notice of rescission.

36 (j) In addition to the requirements of Section 2924, a notice of
37 default shall be served by the association on the owner's legal
38 representative in accordance with the manner of service of
39 summons in Article 3 (commencing with Section 415.10) of
40 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(k) Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this section to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to Section 1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it. The owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the association shall only be required to send notices to the indicated secondary address from the point the association receives the request.

(l) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(m) This section only applies to liens recorded on or after January 1, 2003.

(n) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

SEC. 5. Section 1367.4 is added to the Civil Code, to read:

1367.4. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than one thousand-five hundred dollars—~~(\$1,500)~~ (\$1,800), not including any *accelerated assessments*, late charges, fees and costs of collection, attorney's fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the

judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any *accelerated assessments*, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand ~~five~~ *eight* hundred dollars ~~(\$1,500)~~ *(\$1,800)* or the assessments are more than ~~24~~ *12* months delinquent. An association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) An association that seeks to collect delinquent regular or special assessments of an amount of one thousand ~~five~~ *eight* hundred dollars ~~(\$1,500)~~ *(\$1,800)* or more, not including any *accelerated assessments*, late charges, fees and costs of collection, attorney's fees, or interest, or any assessments that are more than ~~24~~ *12* months delinquent, may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 5

(commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an executive session. The board shall record the vote in the minutes of the next meeting of the board open to all members. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The board shall provide notice by personal service to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.

(4) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.

~~(5) A nonjudicial or judicial foreclosure by an association to collect upon a debt for delinquent assessments shall comply with the following requirements:~~

~~(A) The minimum bid shall be at least 65 percent of the appraised value, excluding any senior liens subject to which the successful bidder would be taking title.~~

~~(B) An appraiser appropriately certified by the Office of Real Estate Appraisers shall perform the exterior appraisal (using Form 2055 Exterior Only Appraisal). The cost of the appraisal shall be recouped at sale if the property is auctioned or at cure of the default prior to sale. The appraisal shall be completed at least 30 days, but no more than 60 days, prior to sale unless, in the event of a judicial foreclosure, the court orders a different completion date.~~

(d) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to assessments owed by owners of separate interests in timeshare estates, as defined in subdivision (x) of Section 11112 of the Business and Professions Code, or to assessments owed by developers.

SEC. 6. Section 1367.5 is added to the Civil Code, to read:

1367.5. If it is determined through dispute resolution pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 that an association has recorded a lien for a delinquent assessment in error, the association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice prescribed in subdivision (a) of Section 1367.1, and costs of recordation and release of the lien authorized under subdivision (b) of Section 1367.4, and pay all costs related to the dispute resolution or alternative dispute resolution.

SEC. 7. Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) Except as additionally provided in subdivision (i), a corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

1 (c) A party who is not a corporation or a natural person may
2 appear and participate in a small claims action only through a
3 regular employee, or a duly appointed or elected officer or
4 director, or in the case of a partnership, a partner, engaged for
5 purposes other than solely representing the party in small claims
6 court.

7 (d) If a party is an individual doing business as a sole
8 proprietorship, the party may appear and participate in a small
9 claims action by a representative and without personally
10 appearing if both of the following conditions are met:

11 (1) The claim can be proved or disputed by evidence of an
12 account that constitutes a business record as defined in Section
13 1271 of the Evidence Code, and there is no other issue of fact in
14 the case.

15 (2) The representative is a regular employee of the party for
16 purposes other than solely representing the party in small claims
17 actions and is qualified to testify to the identity and mode of
18 preparation of the business record.

19 (e) A plaintiff is not required to personally appear, and may
20 submit declarations to serve as evidence supporting his or her
21 claim or allow another individual to appear and participate on his
22 or her behalf, if (1) the plaintiff is serving on active duty in the
23 United States Armed Forces outside this state, (2) the plaintiff
24 was assigned to his or her duty station after his or her claim
25 arose, (3) the assignment is for more than six months, (4) the
26 representative is serving without compensation, and (5) the
27 representative has appeared in small claims actions on behalf of
28 others no more than four times during the calendar year. The
29 defendant may file a claim in the same action in an amount not to
30 exceed the jurisdictional limits stated in Sections 116.220 and
31 116.231.

32 (f) A party incarcerated in a county jail, a Department of
33 Corrections facility, or a Youth Authority facility is not required
34 to personally appear, and may submit declarations to serve as
35 evidence supporting his or her claim, or may authorize another
36 individual to appear and participate on his or her behalf if that
37 individual is serving without compensation and has appeared in
38 small claims actions on behalf of others no more than four times
39 during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) A party that is an association created to manage a common interest development, as defined in Section 1351 of the Civil Code, may appear and participate in a small claims action through *an agent*, a management company representative, or bookkeeper who appears on behalf of that association.

(j) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (i), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(k) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(l) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(m) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

SEC. 8. Section 729.035 is added to the Code of Civil Procedure, to read:

729.035. Notwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development pursuant to subdivision (g) of Section 1367.1 of the Civil Code, subject to the conditions of Section 1367.4 of the Civil Code.

CORRECTIONS:

Text - Page 13.